STATE OF MICHIGAN

COURT OF APPEALS

COMERICA BANK,

Plaintiff-Appellee,

v

CIRCLE BROACH LEASING II, LLC, CIRCLE BROACH COMPANY, INC., ROBERT DUQUETTE, JR., DUQUETTE FAMILY TRUST, and ARLENE P. DUQUETTE,

Defendants-Appellees,

and

TCF BANK,

Garnishee Defendant-Appellant.

UNPUBLISHED
April 24, 2014

No. 314031
Wayne Circuit Court
LC No. 11-015403-CK

Before: SERVITTO, P.J., and FORT HOOD and BECKERING, JJ.

PER CURIAM.

Garnishee defendant, TCF Bank (TCF), appeals by right the lower court orders requiring it to disburse funds to plaintiff garnishor, Comerica Bank, and denying its request to file a stay bond. We affirm.

Plaintiff initiated the current action by filing a complaint against defendants Circle Broach Leasing II, LLC (Circle Broach), Arlene P. Duquette, Robert Duquette, Jr., the Duquette Family Trust, and Circle Broach Company, Inc., alleging a breach of a promissory note against defendant Circle Broach and breach of guarantee agreement against the remaining defendants. The promissory note was executed for $350,000, of which $252,126.48 allegedly remained unpaid at the time of default. The court granted plaintiff's motion for summary disposition against defendants in the amount of $259,434.43, plus attorney fees. Following the entry of the order, plaintiff submitted numerous requests and writs for garnishment to financial institutions. TCF received a garnishment request for defendant Arlene Duquette. TCF sent plaintiff a garnishee disclosure stating that the "garnishee is not indebted" because it had a "Legal Trust account only." Plaintiff submitted interrogatories and a request to produce, to which TCF responded with redacted documents that showed two bank accounts opened by defendant Arlene

Duquette with signature lines dated August 26, 2009 and listing her social security number. The name of the account was changed to "The Arlene P. Duquette Trust U/A dated 06/05/1987" on November 12, 2009. Each account agreement appears to contain the same social security number.

Plaintiff moved to compel answers to its interrogatories and to pay the funds held in the disclosed accounts. TCF did not appear at the hearing, and the court granted the motion. TCF moved for relief from the order, arguing that they were not given notice and that any garnishment was improper because the account was not in defendant Arlene Duquette's name. In opposition to TCF's motion, plaintiff submitted a notice of hearing and proof of service to demonstrate that TCF had knowledge of the hearing. At the hearing on the motion for relief, counsel for TCF admitted that the person who opens the account names the account and they may name it "anything they wish." The court denied the relief requested by TCF. The court also denied TCF's request for stay and appeal bond, but ordered plaintiff to abide by any court orders directing a return of the funds. This appeal followed.

TCF first asserts that the trial court erred by ordering the disbursement of funds from the trust account because the judgment was obtained against the individual, Arlene Duquette. We disagree. The trial court's ruling addressing the objection to a garnishment presents a question of law subject to de novo review. *Asset Acceptance Corp v Hughes*, 268 Mich App 57, 59; 706 NW2d 446 (2005). An issue of statutory construction is reviewed de novo. *Johnson v Pastoriza*, 491 Mich 417, 428-429; 818 NW2d 279 (2012). The rules of statutory construction provide that a clear and unambiguous statute is not subject to judicial construction or interpretation. *Dep't of Transp v Tomkins*, 481 Mich 184, 191; 749 NW2d 716 (2008). Stated otherwise, when a statute plainly and unambiguously expresses the legislative intent, the role of the court is limited to applying the terms of the statute to the circumstances in a particular case. *Id*. The trial court's factual findings are reviewed under the clearly erroneous standard. *In re Receivership of 11910 South Francis Rd*, 492 Mich 208, 222; 821 NW2d 503 (2012). When an appellant fails to challenge the basis of the ruling by the trial court, we need not even consider granting the party the relief requested. *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 388; 689 NW2d 145 (2004).

> Once a judgment is obtained, garnishment is a legitimate and common procedure to satisfy a claim. The design of a garnishment proceeding is to preserve a principal defendant's assets in the control of the garnishee, *i.e.*, one who has property or money in the possession belonging to the defendant, so that the assets may later be accessible to satisfy a judgment against the principal defendant. Rather than being a new or different action, a garnishment proceeding is ancillary to the original suit. [*Ward v Detroit Auto Inter-Ins Exch*, 115 Mich App 30, 35; 320 NW2d 280 (1982) (footnotes omitted).]

Garnishment proceedings place in opposition the garnishor as plaintiff against the garnishee as defendant. *Sears, Roebuck & Co v A T & G Co, Inc*, 66 Mich App 359, 368; 239 NW2d 614 (1976). A garnishee is "[a] person or institution (such as a bank) that is indebted to or is bailee for another whose property has been subjected to garnishment." Black's Law Dictionary (9th ed), p 749. The court has the power to garnish personal property belonging to the person against whom the claim is made but which is in the possession or control of a third person. MCL

600.4011(1); *Berar Enterprises, Inc v Harmon*, 93 Mich App 1, 7; 285 NW2d 774 (1979). "Interests whose very existence is uncertain and contingent on future occurrences are generally not garnishable." *Id*. at 10. Exemptions to garnishment set forth in the court rules and statutes are construed to afford maximum protection to the principal debtor. *Blow v Blow*, 134 Mich App 408, 410; 350 NW2d 890 (1984).

The placing of funds in a bank account as a trustee is insufficient to establish a trust. *Boyer v Backus*, 282 Mich 593, 617; 276 NW2d 564 (1937). Rather the evidence of the trust interest must be established with certainty in the surrounding circumstances and the conduct of the interested parties. See *id*. at 617-618. "[A] settlor is one who provides consideration for a trust." *In re Hertsberg Inter Vivos Trust*, 457 Mich 430, 435; 578 NW2d 289 (1998). When the settlor of the trust is also the beneficiary, the creditors can reach the assets of the trust. *Id*. at 433-434. "[I]t would be contrary to public policy to allow a person to shelter assets from creditors in a trust of which he is the beneficiary." *Id*. at 434.

In the present case, TCF failed to present any evidence of the existence of a trust or the underlying facts and circumstances to demonstrate its terms and conditions. *Boyer*, 282 Mich at 617-618. Rather, TCF only cites to the name change on the account from the individual to a trustee. However, counsel for TCF acknowledged that the individual opening an account can chose any name to represent the account. Further, the documentation indicated that the individual opened the accounts in her name and merely changed the name to trustee. Thus, there is no indication that consideration for the trust came from an independent source, and the settlor, Arlene Duquette, was also the beneficiary. Under these circumstances, TCF's challenge to the garnishment is without merit.[1]

Next, TCF contends that the garnishment disbursement should be set aside because of the lack of notice of the hearing regarding the motion to compel. We disagree. Although TCF asserted that plaintiff failed to serve the motion upon it, plaintiff presented documentary evidence of the notice of hearing and proof of service. The trial court held that the documentation created a rebuttable presumption that TCF failed to rebut. On appeal, TCF concludes that service did not occur, but fails to address the trial court's factual finding or its

[1] We also note that the published and unpublished authority cited by TCF is distinguishable. In those decisions, there was a valid trust that warranted separate treatment between the individual and trustee. Here, TCF failed to establish the validity of any trust.

legal conclusion. In light of the failure to address the basis of the trial court's ruling, TCF did not demonstrate entitlement to appellate relief. *Derderian*, 263 Mich App at 381.[2]

Affirmed. Plaintiff, the prevailing party, may tax costs. MCR 7.219.

/s/ Deborah A. Servitto
/s/ Karen M. Fort Hood
/s/ Jane M. Beckering

[2] In light of our disposition of the merits of the garnishment, we need not decide the merits of the request for a stay bond. See *Jackson v Thompson-McCully Co, LLC*, 239 Mich App 482, 493; 608 NW2d 531 (2000).